REMARKS

Reexamination and reconsideration is respectfully requested in light of the foregoing amendments to the claims and the following remarks.

Applicants initially note an Office Action was mailed on August 22, 2007, from Examiner Tamthom Ngo Truong. On September 10, 2007, a second Office Action was issued from Examiner Noble E. Jarrell. Applicants have noticed in PAIR under Transaction History, a Notice of Withdrawn Action was issued on September 10, 2007, concurrently with the second Office Action. However, under the Image File Wrapper section of PAIR, no such Notice of Withdrawn Action was published. Additionally, Applicants have not received a copy of the Notice of Withdrawn Action. Applicants respectfully request the Examiner to publish and send such Notice of Withdrawn Action.

Claims 1, 3-37 and 39-40 are pending in this application. Claims 13-24 have been withdrawn from consideration due to a restriction requirement.

Response to Arguments

Applicants note that the Examiner has considered the arguments by Applicant in the response of May 16, 2007, directed to solvates having adequate written description as persuasive. Claim 1 has been amended to reflect this reconsideration.

Rejections Under 35 U.S.C. § 112, First Paragraph

Claims 1-12, 25-35 and 37-39 stand rejected under 35 U.S.C. § 112, first paragraph, because the specification, while being enabling for preparation of compounds 1-48, does not reasonably provide enablement for compounds of Claim 1 where variable n equals one (the Office Action has an apparent typographical error stating where n equals zero, however later arguments by the Examiner make it apparent that this statement should be n equals one). Claims

1 and 37 have been amended such that n equals zero, Claim 5 has been amended to reflect this amendment, and Claim 38 has been canceled. Additionally, Claims 39 and 40 have been amended to correct the dependency due to the cancellation of Claim 38. It is believed that by these amendments, the rejection is overcome.

Claim 2 stands rejected under 35 U.S.C. § 112, first paragraph, because the limitation recited in Claim 2 was deleted from Claim 1. Claim 2 has been canceled. It is believed that by this amendment, the rejection is overcome.

Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 26-35 have been rejected under 35 U.S.C. § 112, second paragraph, as lacking antecedent basis because it is unclear which NR^6 of Claim 1 is being referred to in the proviso "provided that NR^6 of Z is not NH." The Examiner asks what NR^6 the proviso is referring to, and whether it is the NR^6 that is required to be on the ring or is it the NR^6 that is one possibility for variable W. Additionally, Claims 1-6, 9-12 and 25-30 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention for the same reasons.

Applicant believes the proviso, "provided that NR^6 of Z is not NH" provides proper antecedent basis for Claims 26-35 and is definite for Claims 1-6, 9-12 and 25-30. However, in order to advance prosecution, Applicants have amended the proviso in Claim 1 to "and provided that R^6 directly bonded to Z is not H" and removed NR^6 from W and V. These amendments provide proper antecedent basis for Claims 26-35 and are definite for Claims 1-6, 9-12 and 25-30. It is believed that by this amendment, the rejection is overcome.

Claims 34-35 have been rejected under 35 U.S.C. § 112, second paragraph, because Z

can not be methyl when it is a ring. This was a typographical error and Claim 34 has been amended to R^6. It is believed that by this amendment, the rejection is overcome.

Obviousness-Type Double Patenting Rejection

Claims 1-12 and 25-36 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7, 10, 20-91 and 101-106 of co-pending Application No. 10/914,974. The Examiner states that although the conflicting claims are not identical, they are not patentably distinct from each other because the instantly claimed formula I overlaps with formula I of 10/914,974 when their variables represent the following:

i. A is Z (of $-(U)_nZ$; n = 0);

ii. X is N;

iii. R^1 is a substituted or unsubstituted monocyclic or bicyclic aryl moiety;

iv. R^2 is H or a substituted or unsubstituted C_{1-8} alkyl;

v. Z is a 5-membered ring having N, V and W single/double bonded to N;

vi. V is CR^7R^8 or CR^8R^8.

Applicants maintain the position as stated in the response filed August 10, 2006. MPEP section 804(I)(B)(1) states:

> If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two applications, while the later-filed application is rejectable on other grounds, the Examiner should withdraw that rejection and permit the earlier filed application to issue as a patent without a terminal disclaimer.

Applicants respectfully point out to the Examiner that the instant case is the earlier filed case. The instant case was filed on August 14, 2003. The 10/914,974 application was filed on

August 10, 2004. Applicants note that there may be some confusion due to the fact that the later filed 10/914,974 application published (February 24, 2005) prior to the instant earlier filed case (May 12, 2005) despite the fact that the instant case was filed almost one year prior to the 10/914,974 application. Applicants believe the obviousness-type double patenting rejection is the only remaining rejection, and therefore respectfully request the Examiner to withdraw this rejection from the instant earlier filed application.

Furthermore, MPEP section 804(II)(B) states:

> A rejection based on nonstatutory double patenting is based on a judicially created doctrine grounded in public policy so as to prevent the unjustified or improper timewise extension of the right to exclude granted by a patent.

It is unclear and confusing to Applicants how they would receive an unjustified or improper timewise extension of the right to exclude for a patent granted to an application filed prior to the application that it is being rejected over. The term of a patent is "20 years from the date on which the application for the patent was filed in the United States..." 35 U.S.C. 154(a)(2). Therefore due to the earlier filing date of the instant application, it is unclear how an unjustified or improper timewise extension could be granted over a later filed application. Applicants therefore respectfully request the Examiner to reconsider and withdraw the rejection.

Claim Objections

The Examiner has objected to Claims 1, 7 and 8 because the superscripts and subscripts are too small and are hard to read. Applicants respectfully request the Examiner to clarify which superscripts and subscripts the Examiner is referring to in the objection. It appears the only common superscripts in the three claims objected to are those in the structure of Z. However, it does not appear from the above rejections that the Examiner has had difficulty reading those

particular superscripts. Also, the publication of US 2005/0101616 shows these superscripts as the same size as other superscripts within the specification and claims. It is respectfully requested that the Examiner clarify the objection so that proper correction may be made.

Conclusion

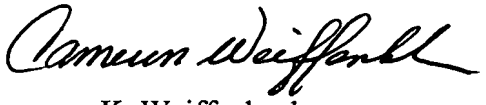
For the foregoing reasons, it is submitted that the claims 1, 3-12, 25-37 and 39-40 satisfy the requirements of the first and second paragraphs of 35 U.S.C. § 112. Favorable reconsideration of the claims is requested in light of the preceding amendments and remarks. Allowance of the claims is courteously solicited.

If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicants' attorney at the telephone number shown below.

No other fee is believed due as a result of this reply. However, if any fee is required, the Examiner is authorized to charge any fee deficiency associated with this response to Deposit Account 500417.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



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